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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 42

FARMERS GRAIN COMPANY, A CORPORATION, ET AL.,
Petitioners,

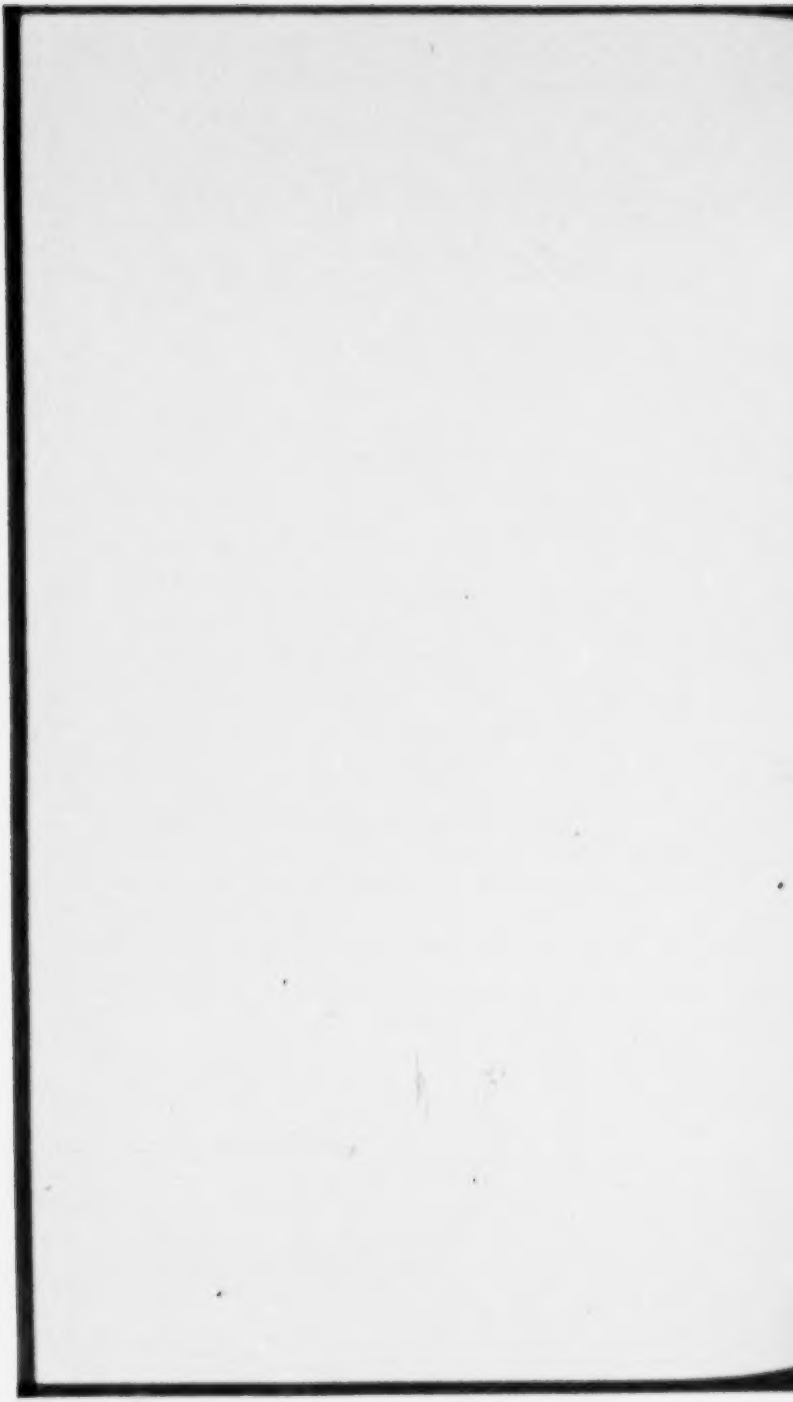
vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE, NO. 926, ET AL., AND TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION,
Respondents.

MOTION OF RESPONDENT, TOLEDO, PEORIA & WESTERN RAILROAD, TO VACATE THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS AND TO REMAND THIS CAUSE TO THE DISTRICT COURT WITH DIRECTIONS TO DISMISS THE SAME AS MOOT AND MEMORANDUM IN SUPPORT THEREOF.

GUY A. GLADSON,
GEORGE W. OTT,
DONALD A. MORGAN,
Attorneys for Respondent, Toledo, Peoria & Western Railroad.

THE BYRON S. ADAMS PRINTING COMPANY, 330 WEST MADISON, CHICAGO



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Respondents.

MOTION.

Now comes TOLEDO, PEORIA & WESTERN RAILROAD, one of the respondents in the above entitled case, by its attorneys, and moves that the judgment of the Circuit Court of Appeals for the Seventh Circuit be vacated and this cause be remanded to the District Court of the United States for the Southern District of Illinois, Northern Division, with directions to dismiss the cause as moot.

In support of its motion, respondent submits the attached Memorandum.

GUY A. GLADSON,
GEORGE W. OTT,
DONALD A. MORGAN,
Attorneys for Respondent Toledo, Peoria & Western Railroad.

MEMORANDUM IN SUPPORT OF MOTION.

On March 31, 1947, this Court granted two petitions for writs of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, which reversed the order of the District Court appointing a receiver for the properties and franchises of the Toledo, Peoria & Western Railroad and remanded the cause with directions to the District Court to issue a mandatory injunction against the Toledo, Peoria & Western Railroad, requiring it to provide transportation service under the protection of a further or ancillary injunction restraining interference with its operations.

One of the petitions for certiorari (No. 1047, October Term, 1946) was filed by the nineteen shippers who had brought their complaint in the District Court against the Toledo, Peoria & Western Railroad (T P & W) and thirteen Railroad Brotherhoods and seven of their officers to compel T P & W to fulfill its obligations under the Interstate Commerce Act to supply transportation to the public, which, it was alleged, T P & W was not furnishing because of a long standing labor dispute with the Brotherhoods. The position taken by the shippers in this Court is that the only effective remedy against the failure of T P & W to provide transportation is the operation of its properties through a receiver and that the substitution by the Circuit Court of Appeals of a mandatory injunction against T P & W for the receivership, which the District Court had decreed, did not afford adequate relief to shippers and the public.

The other petition for certiorari (No. 908, October Term, 1946) was filed by the thirteen Railroad Brotherhoods and seven of their officers, defendants in the District Court, who claimed that eleven of the petitioning Brotherhoods, to-

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gether with the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, were the designated representatives of all of T P & W's crafts or classes of employees. In their petition and supporting brief, the Brotherhoods urged as grounds for reversal that the injunctional relief which the Court of Appeals directed, violates both the Railway Labor Act and the Norris-La Guardia Act.

Case No. 908 and Case No. 1047, October Term, 1946, have been renumbered October Term, 1947, No. 21 and No. 42, respectively.

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The following statement summarizes the facts essential to an understanding of the controversy which existed between the parties when the complaint was filed in the District Court and at the time the petitions for certiorari were filed in this Court.

On March 22, 1942, the President of the United States, by Executive Order, placed the T P & W under the management of the Office of Defense Transportation. On September 6, 1945, the Director of the Office of Defense Transportation ordered the return of management to the T P & W, effective on September 30, 1945. On September 13, 1945, the Brotherhoods requested T P & W's president to confer with respect to a continuation of the rates of pay and working conditions which had been in effect under Government management. The Brotherhoods and T P & W having failed to reach an agreement, practically all employees who were in the service of the Government during the period of its management withdrew from service on October 1, 1945.

On October 1, 1945, picket lines were set up by the Brotherhoods around the general offices of the T P & W at the Union Station, at the East Peoria Yards, where prac-

tically all of the rolling stock of the T P & W had been collected, and at other points, and were thereafter maintained.

T P & W's efforts to operate the railroad after October 1, 1945 were not successful. Its employees, and those desiring employment with it, were threatened with violence, and clashes between its employees and the armed guards which it employed, on the one side, and the pickets on the other, occurred, in one of which two persons were killed. These troubles grew in intensity. Connecting carriers for a time refused to interchange traffic, and one of them, The Peoria and Pekin Union Railway Company, as late as June 4, 1946, issued an embargo against all shipments to and from the T P & W. By June 1946, T P & W was able to offer only limited service, of carload shipments, not including perishables and livestock, originating at or destined to stations between East Peoria and Effner, Illinois.

On February 20, 1946, the shippers filed their complaint in the District Court. They alleged in substance that as a result of a labor dispute between the Brotherhoods and T P & W, the latter had failed to provide transportation service and had abandoned the operation of its lines, contrary to the Interstate Commerce Act. The prayer of their complaint was for appropriate equitable relief to bring about the prompt resumption of transportation service, including an injunction against T P & W, the Brotherhoods, and all other persons from further abandonment of operation of the railroad, and the appointment of a receiver to take possession of T P & W's properties and franchises and to reestablish its transportation service.

T P & W and the Brotherhoods denied the jurisdiction of the District Court to appoint a receiver and also denied that the railroad could not be placed in operation to perform its duties as a common carrier unless a receiver was

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appointed. In its answer and cross-complaint T P & W denied that it had abandoned its railroad and alleged that it had been unable to operate the same due to the violent acts and unlawful conduct of the Brotherhoods, and that, if given adequate protection, it had available or could procure a sufficient number of employees to operate the railroad and render service to the shippers and to the public at large. By its cross complaint, T P & W sought injunctive relief against the continued violence and unlawful conduct on the part of the Brotherhoods against, or interference with the operation of the railroad.

The District Court heard evidence and, on June 6, 1946, entered its decree. The decree denied the motions of all defendants to dismiss the complaint; dismissed T P & W's cross complaint; appointed a receiver to take possession of T P & W's properties and franchises; and enjoined all persons from interfering with the receiver in the performance of his duties. Its opinion is reported in 66 F. Supp. 845.

On appeal by T P & W to the Court of Appeals, that court reversed the District Court's decree of June 6, 1946. It held that the appointment of a receiver for the sole purpose of operating the railroad, without limitation as to time, and not being ancillary to any other equitable or legal relief sought, was improper; that the shippers were entitled to a mandatory injunction against T P & W to compel it to provide transportation service; that "because of the history of this controversy", T P & W should be protected by an injunction against interference by any one in the operation of its lines; and that T P & W's cross complaint should not have been dismissed. It remanded the case with directions to the District Court to proceed accordingly. The opinion of the Court of Appeals is reported in 158 F. (2d) 845.

It was to obtain a reversal of this judgment of the Court of Appeals that, as stated above, the petitions for certiorari were filed, and on March 31, 1947 were allowed by this Court.

* * *

Since the filing of the petitions for certiorari and answers thereto in this Court, the following events have occurred which render this cause moot:

On March 10, 1947, George P. McNear, Jr., president of T P & W, was killed by a person or persons unknown. During the entire period of the controversy in this case, Mr. McNear was in control of the T P & W and its affairs. His will provided that his estate should be administered by Guy A. Gladson, a member of the law firm of Winston, Strawn & Shaw, of Chicago, and by J. T. Hunter, senior member of the law firm of Hunter, Kavanaugh, McLaughlin & Bond, of Peoria, as executors. It also established a long term trust of his entire estate under which Central Hanover Bank and Trust Company, of New York, New York, The Wilmington Trust Company, of Wilmington, Delaware, and said Guy A. Gladson are trustees. This will was admitted to probate on April 10, 1947 and thereafter a new board of directors and new officers were elected.

After two weeks negotiation between the Brotherhoods and representatives of T P & W, an agreement was reached on April 18, 1947 and, effective at 12:01 A. M. on April 21, 1947, the strike ended and the employees returned to work. By May 7, 1947, formal agreements had been signed by T P & W with each of the thirteen Brotherhoods. Since April 21, 1947, T P & W has been providing full and complete transportation to all shippers and to the public except as to perishables which T P & W was required to ice. This exception was removed on June 4, 1947, when T P & W's ice plant was placed in operation. Since April 21, 1947, except as to perishables which T P & W was required to ice, and since June 7, 1947, as to all commodities, T P & W has been and is now providing full and complete transpor-

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tation service to all shippers.

Upon the settlement of the labor dispute and the restoration of complete transportation service over the lines of the T P & W the foundation of this suit has disappeared. No controversy with respect to any issue in this case now exists among or between the respective litigants. The labor dispute which caused the interruption of service has been amicably settled. All embargoes have been lifted. The T P & W is now and since June 7, 1947, has been fully discharging its obligations to shippers and to the public generally. The conditions which existed when this suit was filed in the District Court and at the time this Court granted the petitions for writs of certiorari and which, in the opinion of the courts below, called for equitable relief, no longer prevail and there is presently no necessity for such relief. The case has become moot.

Accordingly, it is respectfully submitted that under the authority of the applicable decisions of this Court, the judgment of the Circuit Court of Appeals for the Seventh Circuit should be vacated and the cause remanded to the District Court of the United States for the Southern District of Illinois, Northern Division, with directions to dismiss the cause on the ground of mootness. *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *U. S.* v. *Alaska Steamship Co.*, 253 U. S. 113; *Montgomery Ward & Co., Inc. et al.* v. *U. S.*, 326 U. S. 690.

A similar motion and memorandum have been filed in Case No. 21 (No. 908, October Term, 1946).

Respectfully submitted,

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GEORGE W. OTT,
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Attorneys for Respondent, Toledo, Peoria & Western Railroad.